

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.27537 of 2005

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Between:

M.Shankar, S/o.Narsimha

... Petitioner

AND

The Principal Secretary, Panchayat Raj & Rural development

Department, Government of Andhra Pradesh, Hyderabad

And others

...Respondents

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ORDER:

The petitioner is sarpanch of Cherlapally Gram Panchayat of Nalgonda Mandal. The third respondent herein purporting to exercise powers under Section 249(1) of A.P. Panchayat Raj Act, 1994 (the Act, for brevity), by proceedings dated 28.4.2005 removed the petitioner from the post of sarpanch and directed the sixth respondent herein, the Upa-sarpanch – to take complete charge of the post of sarpanch. Aggrieved by the same, the petitioner preferred an appeal under Section 249(7) of the Act to the second respondent. By proceedings/order dated 28.7.2005, the second respondent set aside the orders of the third respondent and remitted the matter to the third respondent directing to furnish a copy of the enquiry report and take appropriate action following the provisions of the Act. In view of the orders of the appellate authority, the District Collector passed orders on 11.8.2005 permitting the petitioner to takeover complete charge of the post of sarpanch. The sixth respondent approached the Government of Andhra Pradesh, the first respondent herein – by submitting a revision petition. By memo dated 23.8.2005, the first

respondent stayed the orders of the second respondent and consequently the third respondent again issued proceedings on 30.8.2005 directing the petitioner to handover the charge to sixth respondent herein, who was asked to continue as Incharge sarpanch. The memo dated 23.8.2005 issued by the Government and consequential proceedings of the District Collector dated 30.8.2005 are challenged in this writ petition.

The learned Counsel for the petitioner contends that under Section 249(7) of the Act, the Government of A.P. is constituted as an appellate authority against an order of removal passed under Section 249(1) of the Act. The Government of A.P. delegated the power under Section 249(7) of the Act to the second respondent in exercise of their powers under Section 260 of the Act. Secondly, he would urge that consequent on the remand made by the second respondent the third respondent reinstated the petitioner as sarpanch without disclosing any reasons the Government stayed the matter, which is unsustainable in law. Thirdly, it is urged that the District Collector removed the petitioner placing reliance on the enquiry report submitted by the District Panchayat Officer and such a copy was not furnished to the petitioner as a result of which the entire exercise under Section 249(1) of the Act was rendered void. He would urge that when the order of the District Collector under Section 249(1) of the Act was void for violation of principles of natural justice, the Government ought not to have stayed the orders of the Commissioner.

The learned Assistant Government Pleader for Panchayat Raj submits that the enquiry into the petition submitted by the sixth respondent before the Government is pending and the petitioner has approached this Court after lapse of about four months and therefore, no interference is called for. The learned Counsel for sixth respondent-caveator submits that pursuant to the proceedings of the District Collector dated 30.8.2005, the sixth respondent has been functioning as a sarpanch and therefore, by reason of delay and laches on the part of the petitioner in approaching this Court, no interference is called for.

It is not denied before this Court that the revision petition submitted by the sixth respondent against the orders of the second respondent is pending before the Government. If, at this stage, any opinion is expressed on the questions of fact or questions of law, which are raised and which are formidable, it would cause prejudice to the petitioner as well as the sixth respondent. The question whether a revision petition would lie under Section 264(1) of the Act against an order of the Commissioner in exercise of the powers delegated under Section 249(7) read with 260 of the Act can also be considered by the Government. Insofar as the ground situation is concerned, there is no denial that the District Collector did not furnish the enquiry report of the District Panchayat Officer. The Government should also consider this aspect of the matter before interfering with the order of the second respondent. In this background, it would be in the interest of justice to direct the Government to dispose of the petition submitted by the sixth respondent expeditiously, after giving notice to the petitioner and sixth respondent, within a period of three weeks from the date of receipt of a copy of this order. The petitioner is given liberty to approach the first respondent with a copy of this order immediately.

The writ petition, in the above terms, is accordingly disposed of. No costs.

(V.V.S.RAO, J)

.01.2006.

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